

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
.....

Commercial Complex(BDA),
Indiranagar,
Bangalore- 560 038.

Dated: 15 Oct 87

APPLICATION NOS. 341 & 438 /87(F)

W.P.No. 1

APPLICANT T. Shivappa
& Anr

Vs

RESPONDENTS Supdt. of Post
Offices, Bellary Divn.

To

1. Sri T. Shivappa,
Mail Overseer,
Harapanahalli North,
Harapanahalli Taluk,
Bellary District.

2. Sri R. Rama Rao,
Chitavadagi H.O.,
HOSPET

3. Sri M. Raghavendra Achar,
Advocate,

No. 1074-1075,
Bomashankari I Stage,
Sreenivasa Nagar,
Bangalore- 560 050.

4. The Superintendent of
Post Offices
Bellary Division,
Bellary.

5. Sri M. S. Radonarasiah,
S.E. Sec.,
High Court of Building,
Bangalore-1.

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~STAY~~/

~~INTERIM~~ ORDER passed by this Tribunal in the above said application
on 13 Oct 87.

Encl: as above.

Section Officer
(JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE

DATED THIS THE 13TH DAY OF OCTOBER, 1987

Present Hon'ble Shri L.H.A. Rego, Member (A)
Hon'ble Shri Ch. Ramakrishna Rao, Member (J)

APPLICATION NOS. 341 and 438/1987

1. Sri. T. Shivappa,
aged about 42 years,
S/o Sannadillappa,
Mail Overseer,
Harapanahalli North,
Harapanahalli Taluk,
Bellary District.

.... Applicant in
A. No. 341/87

2. Sri R. Rama Rao,
s/o R. Krishna Rao,
36 years,
Chitavadagi H.O.
Hospet.

.... Applicant in
A. No. 438/87

(Shri M. Raghavendrachar, Advocate)

v.

The Superintendent of Post Offices,
Bellary Division,
Bellary.

.... Common Respondent

(Shri M.S. Padmarajaiah, SCGSC)

These applications having come up for hearing to-day,
Shri L.H.A. Rego, Member (A) made the following:

ORDER

As these two applications are analogous in regard to their factual background and the issues to be determined, we propose to dispose them of, by a common order. The main prayer in these applications is for quashing Memo dated 27.4.1987 (Annexure-C), the impugned order, issued by the Superintendent of Post Offices, Bellary Division, Bellary, (the respondent,) reverting the applicants to their original post of Postmen.



SK

2. The relevant service particulars of the two applicants are as below:

S.No.	Service particulars	Shri T. Shivappa (A-1) (Applicant in A.No.341/87)	Shri R. Rama- Rao (A-2) (Applicant in A.No.438/87)
(1)	(2)	(3)	(4)
(i)	Date of entry in the Postal Department and the post held.	24.12.1979 (Group 'D' employee)	11.5.1973 (Postman)
(ii)	Date of appointment as Postman.	26.11.1980	11.5.1973
(iii)	Date of appointment to the next higher cadre and its designation.	30.4.1987 (Mail Overseer)	02.12.1983 (Mail Overseer) 19.12.1983 (Sorting Postman on completion of training)
(iv)	Date of reversion as Postman.	27.4.1987 (but continuing in this grade on account of the interim stay granted by the Tribunal on 14.5.1987)	27.4.1987 (actually rejoined as Postman on 3.6.87)
(v)	Rank in the Gradation List	73	41

3. For ease of reference ^{the} ~~be~~ ^{as} applicants in Applications 341 and 438, are referred to A-1 and 2 respectively. A.2 was provisionally selected for appointment to the next ^{to} higher cadre and was deputed for the Mail Overseers' Training, for the period from 7.12.1980 to 20.12.1983, at Hospet (Annexure-A1). Annexure A-2, too reveals, that this appointment was purely temporary. In the case of A-1, however, it was not specified likewise, that his appointment to the



next higher cadre was provisional or temporary (Annexure-B). He was also not sent for training, as undergone by A-2. A-2 was much senior to A-1, as his rank in the Gradation List was 41, as compared to 73 of A-1, as the above tabular statement reveals.

4. Prior to 30.11.1983, the posts in the equivalent promotional cadres of ^{de} Mail ^{de} Mail Overseers, Cash Overseers, ~~de~~ were being filled in from among the cadre of Postmen, ~~de~~ Sorting Postmen and Head Postmen, who had put in more than 10 years of service (under the "Old Scheme"), on the basis of combined seniority and merit, the Postal Division being reckoned as the unit for these cadres, for this purpose, in accordance with the instructions contained in Letter dated 7.2.1977, from the Director General, Post and Telegraphs, New Delhi ('DGPT', for short). According to the respondent, as suitable persons conforming to the above criteria, were not forthcoming, other Postmen were being appointed to these promotional cadres, on a temporary or ad hoc basis, in administrative interest. A-1 and A-2 were appointed accordingly in the above promotional cadres, on 30.4.1985 (Annexure-B) and 2.12.1983 (Annexure-A) respectively, as Mail Overseers. On the said dates, they had not put in 10 years of service as Postmen, as the service particulars in para-2 supra reveal. They were so appointed, on their willingness, as ascertained by the respondent. On completion of the Mail Overseers' Training, A-2 was posted as Sorting Postman, Hospet, in a post that was vacant (Annexure-A2).

de

5. With effect from 30.11.1983, the Postal Department implemented a Time-Bound-One-Promotion Scheme ('TBOP' Scheme, for short), for ameliorating career prospects for postmen. This scheme, which covered certain posts in the supervisory and operative lines, also envisaged identification of certain posts to the extent of 10% of the basic cadre, for the purpose of grant of Special Allowance. According to this scheme, incumbents in the posts of Mail Overseers/Cash Overseers/Sorting Postmen/Head Postmen, appointed on a regular basis, as on 30.11.1983, were allowed to continue in these posts, even though the length of their service was less than 16 years.

6. Consequent to implementation of the above TBOP Scheme, the DGPT directed, that all posts in the cadre of Mail Overseers and Head Postmen, be filled in regularly from among those eligible under this Scheme. As a result, such of the Postmen who had put in less than the stipulated minimum of 16 years under this scheme and were officiating as Mail Overseers as on 30.11.1983 and thereafter and were not qualified under the TBOP Scheme, were required to be reverted. Both the applicants came to be reverted from the cadre of Mail Overseers, to that of Postmen (to which they originally belonged) accordingly, on 27.4.1987 (vide Annexure-C), while, Shri D. Venkateswaralu, a TBOP Postman, continued to officiate as Head Postman, Hospet, until further orders, in the vacancy, resulting from the reversion of A-2, ⁴ In the case of A-1 however, the vacancy remained unfilled.



SL

7. While A-1 is said to have represented to the Director, Postal Services, North Division, Bangalore, against his reversion, which was rejected by him, neither a copy of this representation, has been produced nor its date indicated. A-2 is however silent on this aspect. Aggrieved by their reversion, the applicants have approached this Tribunal for redress.

8. Shri Achar, learned Counsel for the applicants, contended, that the applicants were promoted to the post of Mail Overseers, according to the date indicated in para 2 supra. He submitted, that as on the date of their reversion on 27.4.1987, ^{he} ~~the~~ A-1 and A-2 had put in nearly 2 years and 4 years of service respectively, as Mail Overseers. Their willingness for promotion to the post, he said, was ascertained by the respondent, only after those who were eligible under the Old Scheme, had declined this promotion. He pointed out, that in the case of A-1, with reference to Annexure-A (ascertaining willingness for promotion to the cadre of Mail Overseers) or Annexure-B (the appointment order to the post of Mail Overseer), nowhere was it mentioned, that the appointment to the post of Mail Overseer was provisional or ad hoc. The applicants, he said, had served in the post of Mail Overseer satisfactorily, for fairly long spells. Besides, he submitted that A-2 had successfully undergone the prescribed Mail Overseers' Training and had by now completed the stipulated minimum of 10 years of service as Postman. He pleaded, that it was unfair,



La

that willing workers like the applicants, who had given a good account of themselves in the promotional cadre of Mail Overseers, should be reverted, merely to accommodate those, who had earlier backed out and had not availed of the promotional avenue offered to them, in this cadre. This, he said, did not conduce to administrative justice and efficiency but on the contrary, placed a premium on opportunism and fancy-free attitude on the part of those, who had earlier declined promotion, while meritorious service rendered by willing workers, when opportunity was offered to them, was at a discount. Under these circumstances, he asserted, that the appointment of the applicants to the post of Mail Overseers, could not be treated as provisional or ad hoc and their reversion therefore, to the post of Postmen, with effect from 27.4.1987 was illegal and unjust.

9. Refuting the above contentions of Shri Achar, Shri Padmarajaiah, learned Counsel for the respondent, submitted, that A-2 was much senior to A-1 who was ranked 41, in the Gradation List, as against the latter who was ranked 71. He pointed out, that in the case of A-2, it was clearly indicated in Annexures-A1 and A2, that his appointment to the post of Mail Overseers, was purely temporary. Both these applicants were considered for appointment to the post of Mail Overseer under identical circumstances. While in the case of A-2, who was senior, the order specifically indicated that his appointment was purely temporary, in the case of A-1 however, who was much junior, this was not stipulated, owing to inadvertence.

Viewed in this light, Shri Padmarajaiah, submitted, that it would be fallacious and contrary to reason, to hold that the appointment of A-1 to the post of Mail Overseer was regular, while that of A-2 who was much senior to him, was temporary, even though both were similarly circumstanced. The natural corollary therefore, according to Shri Padmarajaiah, was, that the appointment of both the applicants to the posts of Mail Overseers, in the above facts and circumstances, was provisional and ad hoc.

10. Shri Padmarajaiah therefore pleaded, that reversion of the applicants to their original post of Postmen, from that of Mail Overseers, was in accordance with Explanation (iv) below Rule 11 of the C.C.S. (C.C.A.) Rules, 1965, and was not penal in nature.

11. We have examined carefully the rival contentions as also the relevant material placed before us. It is not in dispute, that the appointment of both the applicants to the posts of Mail Overseers, was in similar circumstances i.e., they were considered for the appointment (even though they did not complete the prescribed minimum of 10 years of service) only after those who were senior to them and eligible under the Old Scheme, had declined the avenue of promotion. In the case of A-2 who was much senior to A-1; it was clearly stated (Annexures-A1 and A2), that his appointment was purely temporary. If so, it should necessarily follow, that the appointment of A-1 (his junior)



LA

to a similar post, in identical circumstances, was also provisional, even though the order of his appointment to this post, is silent in the matter. Otherwise, the distinction would be patently invidious and unjustified.

12. According to the ruling of the Supreme Court in (1966)S.C. (CA 1420/66) (STATE OF MYSORE vs. NARAYANAPPA), where a person is appointed to a higher post in an officiating capacity, he does not acquire any legal right to hold that post, for any period whatsoever and accordingly there is no "reduction in rank" within the meaning of Article 311(2) of the Constitution, ^{to} if he is merely reverted to his substantive post, as observed by the Supreme Court in 1958 SC 36 (PARSHOTTAM DHINGRA vs. UNION OF INDIA). These rulings apply to the case before us.

13. Shri Achar next contended, that the TBOP Scheme came to be implemented with effect from 30.11.1983, while the applicants were recruited as Postmen earlier, and therefore, this Scheme could not be applied to them retrospectively. This is a fresh ground urged by Shri Achar in the course of the hearing of the case, and does not appear to have been advanced in the original pleading. As such, it should not ordinarily deserve consideration. Nevertheless, we ^{shall} ~~state to~~ _{LR} ^{MR examine its merits. According to the dicta of the Supreme Court in 1962 SC 36 (GENERAL MANAGER, RAILWAYS, -vs.- RANGACHARI), Article 16(1) of the Constitution, does not prohibit Government from stipulating conditions of efficiency or other qualifications for}

Ld



securing best service, as eligibility for ⁱⁿ promotion. The action of Government, therefore, in introducing the TBOP Scheme, in replacement of the Old Scheme, which was in keeping with the above objective, was legal and proper. The contention of Shri Achar, that the applicants could not be brought within the purview of the TBOP Scheme, is thus not well-founded and is therefore rejected.

14. The next plea of Shri Achar was, that the applicants had qualified for regular promotion to the post of Mail Overseer, in accordance with Rules 238(iv) and 281 of the Posts and Telegraphs Manual (Vol.IV), which read as follows:

"Rule 238(iv)

As an overseer must constantly travel over his beat, he must be a man of strong constitution and active habits. He should ordinarily be a native of the district in which he is employed, so that his local knowledge will assist him, in properly supervising and controlling the ... establishment. He must be able to read and write English and the local Indian language of the district.

Rule 281:

Appointment to the post of Branch Postmasters, Overseers, Overseer Postmen, Sorting or..... postmen and Head Postmen should be made by promotion of Postmen and Village Postmen. Such appointments will normally be made in order of seniority but the appointing authority, may, in his discretion pass over any senior official, whom he does not consider fit for such appointment. A single Gradation List should be maintained for the holders of all these posts which should be made interchangeable."



RA

15. Shri Padmarajaiah countered the same on the ground, that the TBOP Scheme is not at variance with Rules 238 and 281 ibid. Rule 281 inter alia, postulates, that the appointing authority may in his discretion pass over any senior official, whom, he does not consider fit for such appointment. In the instant case, it has not been proved to us, that the regular incumbents, who were eligible for promotion as Mail Overseers, were superseded by the applicants. On the contrary, the facts placed before us reveal, that the applicants were considered in administrative interest, for appointment to the cadre of Mail Overseers, on a provisional basis, only because, the eligible incumbents had declined promotion at that stage. Besides, the applicants were not eligible for promotion to the cadre of Mail Overseers under the Old Scheme or under the TBOP Scheme, as they had not completed the required minimum length of service as ^{LA} ~~in~~ para-2 supra reveals. Also, no rule has been shown to us, whereby the regular incumbents, who were eligible for promotion to this post, ^{LA} forfeited their claim ^{LA} for seniority, for promotion in future, merely because, they declined promotion at a particular point of time, for a short duration. Besides, Government was at the relevant time, contemplating introduction of the revised TBOP Scheme, with a view to improving administrative efficiency, through better service incentives. We, therefore hold, that Rules 238 (iv) and 281 ibid, relied upon by Shri Achar, do not come to the avail of the applicants.

LA

16. In the end, Shri Achar pleaded that A-1, against whose reversion we had granted stay on 14.5.1987, may be allowed to continue as Mail Overseer, till such time a regular incumbent eligible under the new TBOP Scheme was posted. We accept the plea of Shri Achar in the circumstances of the case.

17. In the result, we dismiss both the applications as being devoid of merit, subject however to a direction to the respondent, that A-1 be continued in the post of Mail Overseer in question, till a regular incumbent eligible under the TBOP Scheme, is appointed thereto. No order as to costs.

Sd/-
Member(A) 13.10.87

Sd/-
Member(J) 13.10.87

- True Copy -

kms/Mrv.



[Signature]
SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE